

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

| | | |
|---------------------------|---|------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| v. |) | CRIM. NO. 02cr10301-NG |
| |) | |
| DARRYL GREEN, |) | |
| JONATHAN HART, |) | |
| EDWARD WASHINGTON, |) | |
| BRANDEN MORRIS, and |) | |
| TORRANCE GREEN, |) | |
| Defendant. |) | |
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| GERTNER, D.J.: | | |

PROCEDURAL ORDER

June 2, 2004

After reviewing the pending motions in the above-entitled cases, the Court makes the following ruling, with a formal opinion to be issued following this Order:

I. SEVERANCE

The motions to sever filed by Darryl Green (# 135), Jonathan Hart (# 122), Edward Washington (## 127, 129), and Branden Morris (# 137) are **GRANTED in part and DENIED in part.**

The following defendants will be tried together in the following order:

1. Darryl Green and Jonathan Hart:
Pretrial Conference on December 14, 2004, at 2:30 p.m.;
Trial on January 3, 2005, at 9:00 a.m.
2. Branden Morris and Edward Washington:
Pretrial Conference on March 30, 2005, at 2:30 p.m.;
Trial on April 11, 2005, at 9:00 a.m.

3. Torrance Green:
Pretrial Conference on June 29, 2005, at 2:30 p.m.;
Trial on July 11, 2005, at 9:00 a.m.

II. TRIAL DATES

A. The October 18, 2004, Trial Date

The October 18, 2004, trial date is continued for the reasons outlined in the forthcoming memo. However, the week of October 18, 2004, will be used for hearings as needed, see below.

B. The Darryl Green/Jonathan Hart Trial

The Green/Hart trial is scheduled for January 3, 2005, at 9:30 a.m., with a Pretrial Conference on December 14, 2004, at 2:30 p.m.

C. The Branden Morris/Edward Washington Trial

The Morris/Washington trial is scheduled for April 11, 2005, with a Pretrial Conference on March 30, 2005, at 2:30 p.m.

D. Torrance Green Trial

The Torrance Green trial is scheduled for July 11, 2005, at 9:00 a.m., with a Pretrial Conference on June 29, 2005, at 2:30 p.m.

III. SEPARATE JURIES FOR CRIMINAL LIABILITY AND PUNISHMENT

In the Darryl Green/Jonathan Hart trial, one jury will be impaneled to address the guilt or innocence of the defendant. Prospective jurors will not be examined concerning their views on

the death penalty, commonly known as "death qualification," for the reasons spelled out in the forthcoming memorandum.¹ Should the defendant Darryl Green be found guilty of the charge alleged in Count Sixteen of the Superceding Indictment (relating to the killing of Terrell Gethers), the Court will then impanel a second jury, which jury will be "death qualified," to determine whether a sentence of death is justified under 18 U.S.C. § 3593.

The Court will follow the same procedure in the Morris/Washington trial. One jury will be impaneled to address the guilt or innocence of the defendants, which jury will *not be* "death qualified." Should the defendant Morris be found guilty of the charge alleged in Count Sixteen of the Superceding indictment (the killing of Terrell Gethers), the Court will then impanel a second jury, which jury will be "death qualified," to determine whether a sentence of death is justified under 18 U.S.C. § 3593.

IV. DISPOSITIVE MOTIONS AND SUPPRESSION MOTIONS

A. Motions to Extend the Dates for the Filing of Dispositive Motions

Defendant Darryl Green's Motion [docket entry # 149] and defendant Branden Morris' Motion [docket entry # 155] to extend

¹ The memorandum addresses the severance motions. After considering all the motions for severance, it is clear that the procedure described above -- joint trials, capital and non-capital defendants without death qualification at the guilt stage -- will result in the fewest number of trials and promote efficiency.

the dates for the filing of dispositive motions are **GRANTED**; such motions are due June 18, 2004. The government is to respond to such motions by July 9, 2004, with the following exceptions: The government shall respond to the motions already filed according to the previous scheduling order (of March 4, 2004), namely, the Motions to Dismiss filed by Jonathan Hart (# 150, # 152, # 154), and the following motions filed by Branden Morris: Motion to Preclude the Government from Relitigating Issues Determined by a Valid Final Judgment in United States v. Modlin (#142), Motion to Authorize Disclosure of Prosecutor's Opening and Closing Statements to the Grand Jury and Any Instructions Regarding the Capital Nature of the Matter (# 158), Motion to Strike (# 159).

B. Motions to Extend the Date for Filing Suppression Motions

Defendant Darryl Green's Motion [docket entry # 149] and defendant Branden Morris' Motion [docket entry # 155] Motions to extend the date for filing suppression motions are **GRANTED**, such motions to suppress are due June 18, 2004, the government's responses are due by July 9, 2004.

C. Motions for Leave To File Reply

Defendants shall file motions for leave to file reply memorandum before the hearing dates, or as post-argument memoranda.

V. JULY HEARINGS

Hearings on dispositive motions and certain motions to suppress are to be held between July 15-23, 2004, as needed. Dispositive motions for all defendants shall be heard on those dates and motions to suppress for all defendants insofar as such suppression motions raise common issues. To the extent the suppression motions do not raise common issues, the Darryl Green/Jonathan Hart motions will be heard first, with the Branden Morris/Edward Washington, and Torrance Green motions scheduled for the September dates noted below.

VI. JURY CHALLENGE UNDER 28 U.S.C. § 1867(a)

Branden Morris' Motion for Disclosure of Jury Records (# 140) is **ALLOWED**. Such records are to be produced by July 18, 2004. The defendant shall file any motions under 28 U.S.C. § 1867(a) by September 15, 2004. The government shall reply by November 1, 2004. Hearings on the jury venire will be scheduled for the November dates noted below.

VII. OTHER HEARING DATES²

Because of the complexity of the issues involved in these cases, any and all hearings and conferences will be scheduled on the following dates (with additional dates scheduled, as needed):

September 1-3, 2004, 9:00 a.m. - 5:00 p.m.;

² These dates are not presently scheduled for specific motion hearings or for specific defendants. The Court is blocking off these dates and times to deal with whatever issues need to be addressed, and all counsel are to block off these dates and times as well.

October 15-28, 2004, 9:00 a.m. - 5:00 p.m.;

November 15-19, 2004, 9:00 a.m. - 5:00 p.m.;

December 1-2, and 6-7, 2004, 9:00 a.m. - 5:00 p.m.

All proceedings will be held in Judge Gertner's courtroom,
Courtroom 2 on the 3rd floor.

SO ORDERED.

Dated: June 2, 2004 s/NANCY GERTNER, U.S.D.J.